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Federal Communications Commission
Office of the Secretary

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Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W. Room TW-A325
Washington, DC 20554

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Re: Comments Regarding NPRM in CG Docket No. 02-278 & CC Docket No. 92-90, FCC 02-250
Telephone Consumer Protection Act of 1991 (TCPA), 47 CFR Part 64

Dear Madam Secretary:

As an independent management consultant to vendors that provide tools to make contact centers more productive and efficient, I felt I had to respond to the FCC's notice as referenced above.

Technology and contact center productivity has made enormous strides in the decade since TCPA was enacted. In general all parties, business/organization and consumer, have benefited from the technology and greater attention to the customer's needs and the importance of the customer relationship. We are now witnessing the advances in technology providing greater levels of information and contact via the internet and wireless devices.

Unfortunately, with increased access some small segment of the industries have used the technology and productivity gains to abuse sound business practices and consequently, have created a nuisance to the consumer. In a perfect situation, we would hope the telemarketing and related industries would police themselves, but as the thousands of complaints your office has received indicate, this is not the case.

The use of predictive outbound calling, predictive dialers, has offered telemarketing companies an enormous increase in agent productivity (in the order of 300% over manual outbound calling). For the most part the increased productivity has meant greater job satisfaction and increased profits/savings for the telemarketer and the product/service company. Consider that a CSR, customer service representative, now can talk to a live customers/prospects as much as 50 minutes per hour, whereas in a manual mode they were lucky to get 15 minutes per hour. I do not believe it should be the Commission's objective to eliminate this productivity tool. Fortunately, it does not have to be the case.

Call Progress Detection

This is the term used when referring to predictive dialers knowing exactly the stage of the call sequence and, whether or not the contact is a live party or an answering machine, sit tone, or some other non-human contact. There are a number of techniques that are used to perform this very important task; the Proposed Rule change describes one such technique as detecting "noise". Under this form of call progress detection there is room for error the Rule change explains; furthermore, there is significant delay in the carrier's network. Therefore, even if the call progress detection does determine the contact is a human being, the delay in transferring the call through the networks causes the CSR to not hear the first and perhaps several "hello" from the customer. As we all have experienced this is very annoying and usually results in an abandoned call because the customer placed the receiver "on-hook". Using other detection techniques, rather than trying to detect "noise" can eliminate the "dead air" annoyance. Most of the progressive predictive dialer vendors are aware of these techniques and many have adopted these techniques; other vendors simply cannot adapt these techniques because of their technology platform restrictions or choose to increase their profits by not investing in further development of their product(s).

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It should be noted that even with techniques that do eliminate not hearing the customer's first "hello", some telemarketing practices choose to "over-dial", i.e. dialing more numbers than they know they have CSR's available to handle. This is simply a poor business practice on the part of the telemarketing management; under this practice, no technology can eliminate this cause of "dead air".

Transmission of Caller ID

Again, the technology is available to support the transmission of caller identification to the customers' instrument. The carrier networks have the ability to transmit this information and the contact center technology can support this requirement. The contact center technology may need to be upgraded and possibly, all vendors have not made the investment to add this feature to their technology. However, many vendors with whom I consult do offer this feature as part of their standard feature set. Whether or not the telemarketing firm wants to activate this capability is another matter. For instance in a debt collection application, the originator may not want the customers to know that they are calling them; however, this would not preclude the ANI (the calling number) from being displayed at the customers' instrument.

National Do Not Call List

Whether or not this gets consideration is not a technology issue; all contact center technology will accommodate this requirement. However, even today with state and DMA Do Not Call Lists, the contact centers have a significant administration burden; frankly, a national list would cut down on some of this administrative burden.

I do not agree with enacting a national do not call list, I feel this will place a serious restriction on the enterprise' who rely on telemarketing as a major channel for their revenue. Furthermore, if the above technology were implemented at the contact center and contact center management used sound business practices, the consumer/customer would not feel his/her only remedy was to register on the Do Not Call List. Both the ATA and DMA have been vocal about opposing this part of the proposed change and I am in agreement. Anywhere from 1% to 3% of our working population, depending on the section of our country, make their wage from contact centers; why place their employment in jeopardy when there are technology and management techniques that would eliminate the need for this action.

FTC or FCC

Frankly, I am not in a position to say which commission should govern what portion of this industry. However, it is clear that the industry does need regulation and acts such as the FTC "Telemarketing Act" have been productive and, set the tone for a greater level of industry self-policing. From my experience, the FTC has been effective, however, the industry is very aware of the FCC's possible actions and frankly, your interest and possible action is having an effect. I would suggest that the FTC and/or the FCC take more decisive and visual action with violators of the current regulations. Such action would send a strong message through out this industry. I would also encourage a greater level of tax credit and or relief to contact centers that upgrade their technology to meet the needs of their customers and the proposed rule changes.

Madam Secretary, thank you for your time and consideration.

Respectfully,

Douglas W. Smith
Principal